



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2004

Ms. April M. Virnig
Taylor, Olson, Adkins, Sralla, Elam, LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2004-4173

Dear Ms. Virnig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201978.

The City of Southlake (the "city"), which you represent, received a request for copies of cellular phone bills for city council members, the mayor and the city manager. You claim that portions of the requested information are excepted from disclosure under sections 552.117 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information is subject to section 552.022(a)(3) of the Government Code. Section 552.022(a)(3) provides that information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body is not excepted from required disclosure unless they are made expressly confidential by law. The submitted information consists of cellular phone billing records. These records are accounts as contemplated by section 552.022(a)(3), and are therefore public information not excepted from public disclosure, unless the information is expressly made confidential under other law. Sections 552.117 and 552.136 of the Government Code are considered "other law" for the purposes of section 552.022. Therefore, we will address your argument for those exceptions for this information.

Section 552.136 of the Government Code makes certain account numbers confidential and provides in relevant part:

- (a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or

instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
 - (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.
- (b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We therefore conclude that the city must withhold the account numbers you have marked pursuant to section 552.136 of the Government Code.

Section 552.117 of the Government Code may also be applicable to some of the information that is subject to the purview of section 552.022. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. If the city manager has timely elected to keep his personal information confidential, the city must withhold the information you have marked. The city may not withhold this information under section 552.117(a)(1) if the city manager did not make a timely election to keep the information confidential.

In summary, we conclude that the city must withhold the section 552.136 information you have marked in the submitted records. If the city manager has timely elected to keep his personal information confidential, the city must withhold the information you have marked pursuant to section 552.117(a)(1). All remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

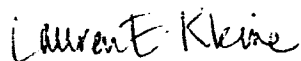
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/seg

Ref: ID# 201978

Enc. Submitted documents

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(w/o enclosures)